TAN SRI ABDUL RAHIM MOHD NOOR

v.

PP

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
MOHD SAARI YUSOFF JCA
KC VOHRAH JCA
[CRIMINAL APPEAL NO: W-09-32-2000]
22 MAY 2001

CRIMINAL PROCEDURE: *Sentence - Adequacy - Imposition of fine in addition to imprisonment - Whether sessions judge exercised discretion properly - Whether necessary to give reasons for imposing fine - Principles of sentencing - Whether appellate court should enhance sentence in absence of appeal by Public Prosecutor*

The appellant, a former Inspector General of Police of Malaysia, pleaded guilty to an amended charge under s. 323 of the Penal Code for voluntarily causing hurt to a former Deputy Prime Minister of Malaysia and was convicted and sentenced to two months' imprisonment and a fine of RM2,000 by the Sessions Court. The High Court dismissed his appeal against the sentence of imprisonment but allowed his appeal against the fine and quashed it. The Public Prosecutor's cross-appeal against the inadequacy of the sentence was dismissed. The appellant appealed to the Court of Appeal but there was no further cross-appeal by the Public Prosecutor.

Held:
Per Shaik Daud Ismail JCA

[1] The onerous function of sentencing is within the sole domain of the court. Thus it follows that the exercise of this duty must necessarily be guided by relevant and well-established considerations, the primary consideration being public interest. There must be a balance between the interests of justice, the offender, the victim and the public.

[2] At the material time the appellant held the highest office in the police force and it was expected that he would conduct himself in a manner befitting his standing. Instead he had acted towards an arrested person in a despicable manner and in the process brought disrepute to the police force as a whole. The records indicated that the sessions judge had applied himself correctly to the issues and exercised his sentencing

discretion well. It was wrong to quash the fine on the ground that the sessions judge had chosen not to attribute specific reasons for the imposition of the fine.

[3] It is not the practice of an appellate court to embark upon an imposition of its own sentence when the Public Prosecutor has chosen not to appeal the inadequacy of the sentence.

Per curiam

[1] Matters of assault on members of the public or an arrested person by police officers, irrespective of rank, should be dealt with the full wrath of the law. The sentence imposed should reflect the degree of the public's abhorrence and intolerance in respect of such acts.

[Appeal dismissed; sentences imposed by sessions judge restored.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu, bekas Ketua Polis Malaysia, mengaku salah terhadap suatu tuduhan terpinda dibawah s. 323 kerana melakukan kecedraan dengan sengaja terhadap responden, bekas Timbalan Perdana Menteri, dan dihukum penjara selama dua bulan dengan denda sejumlah RM2,000 oleh Mahkamah Sesysen. Mahkamah Tinggi telah menolak rayuan perayu terhadap hukuman penjara akan tetapi membenarkan rayuannya terhadap denda dan membatalkannya. Rayuan balas oleh Pendakwa Raya terhadap ketidaksembingan hukuman telah ditolak. Perayu merayu kepada Mahkamah Rayuan tetapi tidak ada rayuan balas selanjut oleh Pendakwa Raya.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Tugas penghukuman adalah didalam bidangkuasa tunggal mahkamah. Ini bermaksud bahawa tugas ini perlu diawasi oleh pertimbangan-pertimbangan yang wajib dan relevan. Pertimbangan terutama dan paling tinggi adalah kepentingan awam. Suatu keseimbangan yang sesuai harus dicapai demi kepentingan-kepentingan keadilan, pesalah, mangsa dan orang awam.

[2] Pada masa yang material perayu memegang jawatan tertinggi dalam pasukan polis dan dijangka bahawa beliau akan membawa dirinya mengikut cara yang sewajar dengan kedudukan tingginya. Sebaliknya beliau telah bertindak terhadap seorang yang ditahan secara keji dan ini telah membawa kehinaan kepada pasukan polis pada kesuluruhannya. Rekod-rekod menunjukkan bahawa hakim Mahkamah Sesyen telah menumpukan segenap fikiran kepada isu-isu dihadapannya dan

mempergunakan budi bicara hukumannya dengan cekap. Adalah salah untuk membatalkan denda berdasarkan anggapan bahawa hakim Mahkamah Sesyen tidak memberi alasan-alasan tertentu untuk mengenakan denda.

[3] Ianya bukanlah amalan Mahkamah Rayuan untuk mengenakan hukuman sendirinya sekiranya Pendakwa Raya tidak merayu terhadap ketidakseimbangan hukuman.

Per curiam

[1] Serangan terhadap orang awam atau orang yang ditahan oleh pegawai-pegawai polis, tidak kira pangkatnya, perlu diurus dengan sepenuh kemurkaan undang-undang. Hukuman yang dikenakan perlu mencerminkan sejauh manakah kejijikan dan ketidakkesabaran orang awam terhadap tindakan-tindakan sedemikian.

[Rayuan ditolak; hukuman-hukuman hakim Mahkamah Sesyen dipulihkan.]

Case(s) referred to:
PP v. Zainuddin & Anor [1986] 2 MLJ 100 ***(refd)***

Legislation referred to:
Penal Code, s. 323

For the appellant - K Kumarendran (V Sithambaran); M/s Kumar & Co
For the respondent - Sallehuddin Saidin (Dzulkifli Ahmad)

[Appeal from High Court, Kuala Lumpur; Criminal Appeal No: 42-13-2000]

Reported by K Ganesh

JUDGMENT

Shaik Daud Ismail JCA:

This may appear to be a run of the mill case of voluntary causing hurt but it attracted the widest worldwide publicity that any other such like case could not possibly do. It can be said that this case created history in Malaysia as it shook the nation to the very core. The appellant, the Inspector General of Police was originally charged in the Kuala Lumpur Sessions Court on 22 April 1999 for an offence of attempting to cause grievous hurt to the former Deputy Prime Minister Dato' Seri Anwar Ibrahim while he was under police custody in the lock-up at the Police Headquarters in Bukit Aman Kuala Lumpur on the night of 20 September 1998. It was fixed for hearing on 20 September 1999 exactly one year after the incident. After a number of postponements all at the instance of the appellant, the case was finally fixed for hearing on 14 March 2000. On

that day the learned Deputy Public Prosecutor tendered an amended charge under s. 323 of the Penal Code, an offence of voluntary causing hurt. The appellant immediately pleaded guilty and after the facts were given and admitted to by the appellant and after hearing the mitigating submission, the learned Sessions Judge convicted the appellant and sentenced him to two months' imprisonment and a fine of RM2000 in default two months' imprisonment.

The appellant appealed against the whole of the sentence to the High Court while the Public Prosecutor cross-appealed against the inadequacy of the sentence imposed by the Sessions Court. The appeal finally came up for hearing in the High Court Kuala Lumpur on 10 November, 2000 ie, over two years after the incident. The learned judge dismissed the appeal against the two months' custodial sentence but allowed the appeal against the fine and quashed it. The Public Prosecutor's cross-appeal was dismissed.

At the hearing of the appeal against the two months' custodial sentence, the two learned counsel for the appellant submitted that the custodial sentence was excessive and urged upon us to impose a fine instead on the ground that the custodial sentence is unsuitable on the proved facts. They also submitted that the learned Sessions Judge had failed to adequately consider the salient aspects of the case, like the antecedents and contributions to the nation of the appellant. They added that the arrest and conviction taken together were sufficient humiliation to the appellant and that he had unreservedly apologised to Dato' Seri Anwar Ibrahim and his family. The learned counsel also cited a number of authorities for offences under s. 323 of the Penal Code where upon conviction the court had imposed fines or binding over orders.

The learned Deputy Public Prosecutor in his submission urged upon us not to disturb the custodial sentence as the learned Sessions Judge had made the right consideration and had applied correct principles of sentencing, and that the Public Prosecutor was satisfied with the High Court judge's sentence.

The facts of the case as admitted by the appellant showed that on the night of 20 September 1998, Dato' Seri Anwar Ibrahim was arrested and taken to the police headquarters at Bukit Aman and placed in the lock-up at the ground floor. At about 10.45pm the appellant came down from his 30th floor office to the lock-up and ordered his men through hand signals to blindfold Dato' Seri Anwar Ibrahim and to handcuff him with his hands behind his back. The appellant then entered the lock-up and rained blows

on Dato' Seri Anwar Ibrahim who screamed with pain. His screams were heard by two senior officers who were close by and they intervened to stop any further assault by the appellant by pulling him away from Dato' Seri Anwar Ibrahim. Four medical reports were tendered by the prosecution on the extensive injuries sustained by Dato' Seri Anwar, including the infamous black-eye.

The learned Sessions Judge considered all aspects of the case including the appellant's contributions to the nation, his long service in the police force and his clean record and also a number of authorities on the principles of sentencing before he imposed the sentence in question.

It cannot be gainsaid that the most onerous function of any court is to decide the appropriate sentence in any criminal case. In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. In that context the interest of justice should no doubt take into account the interest of the offender. But it is often forgotten that the interest of justice must also include the interest of the community. In assessing sentence the court should balance the interest of the offender with the interest of the victim and strike a balance, not, of course forgetting that the interest of the public should be of the uppermost consideration.

The appellant at the time of the offence held the highest office in the police force and therefore should have been a role model to the force. Instead he stooped to the lowest level when he acted as he did. His actions towards an arrested person is despicable and inhuman, to say the least, more so in this case when the arrested person was, on his orders, blindfolded with his hands handcuffed behind his back. We cannot fathom the need to blindfold and handcuff a prisoner who was already in the police lock-up. This, to us, is an indication of the deliberate nature of the assault on a defenceless victim. This is the worst act of indiscipline in a disciplined force.

We have gone through the record of appeal thoroughly and considered the submissions of learned counsel and the learned Deputy Public Prosecutor. It is not true to say that the learned Sessions Judge had failed to consider certain aspects of the case. The records show that he did consider every aspect of the case including all mitigating factors put forth, and also the appellant's long service to the nation. In the circumstances of this case we can find nothing to interfere with the sentencing discretion of the Sessions Judge. By the same token we are of the view that the High Court too, ought not to have interfered with this discretion. In quashing the

imposition of the fine, the learned judge of the High Court had said that he did this because the learned Sessions Judge did not give reasons for imposing the fine. Merely because he did not give specific reasons for imposing the fine, it is our view that this alone is no reason to quash it. The overall reasons given by the learned Sessions Judge encompass the whole of the sentence.

On the facts and circumstances of this case, we think that the sentence imposed by the learned Sessions Judge is on the lenient side. For reasons best known to him, of which we cannot comprehend, the Public Prosecutor then chose not to cross-appeal on sentence to this court. We say we cannot comprehend because when the Sessions Court imposed the sentence, the Public Prosecutor thought it fit to cross-appeal on sentence to the High Court. The Public Prosecutor's petition of appeal showed how unhappy he was with what was termed as gross inadequacy of the sentence and that he had urged upon the court to enhance the sentence. When the High Court, however, reduced that sentence by quashing the imposition of the fine, the Public Prosecutor chose not to cross-appeal in respect of the inadequacy of sentence. We find it rather strange that when the sentence was higher it was thought to be grossly inadequate but when it was reduced, it was deemed to be adequate. We are mindful of the fact that the law and the Constitution give absolute power to the Public Prosecutor to appeal or not, whether to charge a person or not and with what charge and such powers are to be exercised at his discretion but we are reminded that the community expect him to exercise it fairly, honestly and professionally (see *PP v. Zainuddin & Anor* [1986] 2 MLJ 100 at 103).

Be that as it may it is, however, not the practice of an appellate court to impose its own sentence over that of the trial court especially when the Public Prosecutor chooses not to appeal.

We would, however, like to take this opportunity to remind the lower courts that they should take cases of police officers assaulting anyone very seriously. When a police officer, be he of whatever rank, is found guilty of assaulting a member of the public and more so of an arrested person as in this case, the courts should send a message of the public abhorrence of such acts – by coming down hard on him and nothing short of a custodial sentence, even for a first offender, would suffice.

As mentioned earlier we find nothing wrong in law with the sentence imposed by the learned Sessions Judge. We dismiss the appeal and restore the Sessions Court's sentence of two months imprisonment and a fine of RM2,000 in default two months. The custodial sentence shall begin from today 30 April 2001.